

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KULBIR SINGH,	)	
	)	CASE NO. C06-1613-MJP-JPD
Petitioner,	)	
	)	REPORT AND RECOMMENDATION
v.	)	
	)	
ALBERTO GONZALES, <i>et al.</i> ,	)	
	)	
Respondents.	)	
_____	)	

I. INTRODUCTION AND SUMMARY CONCLUSION

On November 7, 2006, petitioner Kulbir Singh, proceeding through counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, and a Request for Temporary Restraining Order, alleging that he is being improperly detained without bond at the Northwest Detention Facility in Tacoma, Washington, while respondents seek to “remove” him to Germany. (Dkt. #1). Petitioner seeks an order restraining respondents from continuing to detain him without bond, and from removing him from the United States except in compliance with any applicable treaties.

Having reviewed the entire record, I recommend that the Court deny petitioner’s habeas petition and request for temporary restraining order. (Dkt. #1).

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## II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner Kulbir Singh, a.k.a. Lakhbir Singh, is a native and citizen of India. In December 2000, he entered the United States, without inspection, from Canada after traveling from India. He was subsequently placed in removal proceedings in San Francisco, California. On April 10, 2002, an Immigration Judge (“IJ”) denied petitioner’s applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), and ordered him removed to India. (Dkt. #1, Ex. 1). Petitioner appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”). On February 26, 2004, the BIA sustained petitioner’s appeal and granted petitioner’s applications for withholding of removal and protection under the CAT. The BIA, however, sustained the IJ’s decision to deny asylum and “did not disturb” the IJ’s decision to order removal. (Dkt. #1, Exs. 1 and 2). On March 18, 2004, petitioner timely filed a Petition for Review with the Ninth Circuit Court of Appeals. On March 8, 2006, the Ninth Circuit dismissed petitioner’s petition. (Dkt. #1, Ex. 1). Accordingly, petitioner’s order of removal became administratively final as of February 26, 2004. However, petitioner cannot be removed to India due to the BIA’s grant of withholding of removal and protection under the CAT. *Id.*

On August 7, 2006, U.S. Immigration and Customs Enforcement (“ICE”) sent petitioner a letter, notifying him that the Department of Homeland Security (“DHS”) intends to remove him to Germany. (Dkt. #1, Ex. 1). The letter provides, in part, as follows:

As your removal to the country designated in the removal order is not presently possible, you are hereby notified that DHS intends to disregard the designation in accordance with section 241(b)(2)(C) of the Immigration and Nationality Act (Act). Pursuant to section 241(b)(2)(E) of the Act, DHS is making arrangements to remove you to a previously designated country, specifically Germany.

*Id.* The letter also notified petitioner that if he believes he will face persecution or torture in Germany, he may request withholding of removal and protection under the CAT. *Id.* On August 10, 2006, petitioner was arrested at a truck stop by DHS officers and detained at the

1 Northwest Detention Center in Tacoma, Washington. (Dkt. #1 at 3).

2 On October 31, 2006, the United States filed a Complaint for Extradition and a Warrant  
3 for Arrest in this Court, initiating proceedings to extradite Mr. Singh to Germany. (Case No.  
4 06-591-JPD-ALL, Dkt. #1). Pursuant to the Extradition Treaty between the United States and  
5 Germany, the German authorities presented a formal request for Mr. Singh's surrender,  
6 supported by appropriate documentation. (Case No. 06-591-JPD-ALL, Dkt. #4).

7 On November 7, 2006, while his extradition was pending, petitioner filed the instant  
8 petition for writ of habeas corpus and request for temporary restraining order ("TRO"), seeking  
9 to restrain respondents from continuing to detain him without bond, and from removing him  
10 from the United States. The Court determined that petitioner had not demonstrated, as required  
11 by Rule 65(b), that he would suffer immediate and irreparable injury, loss, or damage before  
12 respondents could be heard in opposition. Accordingly, the Court construed petitioner's  
13 request for TRO as one for preliminary injunction, and directed respondents to file a response.  
14 The Court entered an order temporarily staying petitioner's removal pending resolution of  
15 petitioner's motion for preliminary injunction. (Dkt. #3).

16 On November 16, 2006, at the initial hearing in the extradition case, the Court  
17 concluded that Mr. Singh should be detained pending a hearing on Germany's extradition  
18 request. (Case No. 06-591-JPD-ALL, Dkt. #6). Accordingly, petitioner is presently detained  
19 by Order of this Court, pending extradition proceedings in Cause Number 06-591-JPD-ALL.  
20 Petitioner has twice requested that his extradition hearing be continued, and is currently  
21 scheduled for January 31, 2006.

22 On November 20, 2006, respondents filed a response to petitioner's motion for  
23 preliminary injunctive relief and habeas petition. (Dkt. #5). On November 22, 2006, the Court,  
24 having reviewed respondents' response, determined that petitioner's motion for preliminary  
25 injunction and habeas petition should be reviewed at the same time, and noted them on the  
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1 Court's calendar for consideration on December 22, 2006. (Dkt. #7). On December 21, 2006,  
2 petitioner filed a stipulated motion to extend the time for submission of his response brief from  
3 December 22, 2006 until January 8, 2007. (Dkt. #8). The Court subsequently granted the  
4 motion. (Dkt. #9). To date, petitioner has not filed a response.

5 Having carefully reviewed the entire record, I recommend that petitioner's habeas  
6 petition and motion for preliminary injunction (Dkt. #1) be DENIED.

### 7 III. DISCUSSION

8 Petitioner claims that he is being improperly detained without bond at the Northwest  
9 Detention Facility in Tacoma, Washington, while respondents seek to "remove" him from the  
10 United States to Germany. Petitioner asserts that respondents must not be allowed to remove  
11 him to another country with which the United States has a Treaty of Extradition except under  
12 treaty conditions. Petitioner requests a hearing on his detention without bond, and an injunction  
13 restraining respondents from transferring him "to any other U.S. or other government agency, or  
14 to any other location, should he not be immediately released." (Dkt. #1).

15 Petitioner is not entitled to an injunction regarding his immigration detention because he  
16 is properly detained in extradition proceedings pending a hearing on Germany's extradition  
17 request. (Case No. 06-591-MAT-ALL, Dkt. #6). Furthermore, petitioner's claims that his  
18 extradition "should be carried out under the U.S. - Germany Extradition Treaty (June 28,  
19 1978)" appear to be moot. Petitioner's extradition proceedings are ongoing, and any challenge  
20 to his continuing detention may be raised in those proceedings. Indeed, this Court's November  
21 16, 2006, Detention Order explicitly invited Mr. Singh "to raise the issue of whether "special  
22 circumstances" exist to reconsider the decision of detention." (Case No. 06-591-JPD-ALL,  
23 Dkt. #6).

24 In light of petitioner's ongoing extradition proceedings and the relief sought by  
25 petitioner, I recommend that petitioner's habeas petition and motion for injunctive relief be  
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1 denied and dismissed as moot.

2 IV. CONCLUSION

3 For the foregoing reasons, I recommend that petitioner's habeas petition and motion for  
4 injunctive relief (Dkt. #1) be DENIED. A proposed Order accompanies this Report and  
5 Recommendation.

6 DATED this 18th day of January, 2007.

7   
8 JAMES P. DONOHUE  
9 United States Magistrate Judge  
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